

REMARKS

This paper is filed in response to the Office Action dated September 8, 2005.
Applicant amends claim 23 to correct a typographical error.

35 U.S.C. § 102 Rejections

Claims 1, 6-8, 9-13, 16, 17, 19-22, and 26-29 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,303,697 to Brain (Brain).

Independent claims 1 and 21 each recite a “tab”. The claimed “tab” is either fixed to the airway tube (independent claim 1) or defined by the airway tube (independent claim 21). On page 3 of the Office action, the examiner indicates that Fig. 3, reference number 9 of Brain shows the claimed tab. However, Brain describes a handle, not a tab. (*See*, e.g., col. 3, ll. 1-5.) The handle is an elongated rod, suitable for gripping with a hand. Brain’s handle is easily distinguished from a tab, which is defined as “a projection, flap, or short strip attached to an object to facilitate opening, handling, or identification.” (Webster’s New College Dictionary, 2001 edition, Attachment A) Brain does not disclose or suggest the “tab” recited in independent claims 1 and 21.

Moreover, Brain’s handle and the claimed tab serve different purposes. Brain’s rigid handle is used for inserting the laryngeal mask airway device into a patient, and the handle permits, for example, a physician to insert the device into a patient without requiring the physician to insert their finger into the patient’s mouth. In contrast, the claimed tab is sized so as to facilitate using tape applied to the tab and the patient’s face to hold the device in a stable position once it has been inserted into the patient. The tab is sized so as to avoid contact with the patient’s nose while the tab is held against the patient’s upper lip by the tape (*see*, e.g., Figure 6 of the present application). Brain does not teach or suggest reducing the size of its considerably longer handle, and doing so would severely reduce its utility for its intended purpose – aiding insertion of the device. Accordingly, independent claims 1 and 21, and the claims that depend therefrom, are believed to patentably distinguish over Brain.

Similar arguments apply to independent claim 26, which recites a “flange” instead of a tab. A flange, which is defined as “a protruding rim, edge, rib, or collar, as on a wheel or a

pipe shaft, used to strengthen an object, hold it in place, or attach it to another object” is similarly distinguishable from Brain’s handle. (Id., Attachment A)

Independent claim 27 requires “... an epiglottis support flange, the flange defining an outer perimeter ..., the outer perimeter of the flange being fixed to the inner perimeter of the cuff” The examiner likens Brain’s “flexible upstanding collar” (Figs. 2 and 3A reference label 27) to an epiglottis support flange. However, the outer perimeter of Brain’s collar is attached to the apex of his cuff, as is clearly depicted in Fig. 3A, and not to the cuff’s inner perimeter, as required by claim 27 and supported in Figs. 8B and 8C. Furthermore, Brain’s upstanding collar would not serve as an effective epiglottis support flange since it is not positioned to prevent the epiglottis from covering aperture 19 (Fig. 2) of breathing tube port 22 (Fig. 1). In addition, nowhere does Brain refer to his flexible upstanding collar as serving any epiglottis-related function. Applicant therefore submits that the cited art does not teach or suggest an epiglottis support flange, the outer perimeter of the flange being fixed to the inner perimeter of the cuff.

35 U.S.C. § 103 Rejections

Claims 2-5, 14, 15, and 23-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brain.

Independent claim 23 recites a “tab” defined by the airway tube, and is therefore believed to patentably distinguish over Brain for the reasons presented above for claim 21. Independent claim 23 (and dependent claims 24 and 25) further recite “applying adhesive tape to the tab and to a head of the patient such that the tape biases the tab towards the head of the patient.” Brain neither discusses nor suggests adhesive tape or its application. Applicant respectfully submits that the Examiner has not cited any art showing the claimed “applying adhesive tape” step, and has therefore not made a showing of obviousness. Accordingly, for this additional reason, these claims are believed to patentably distinguish over Brain.

Conclusion

Since independent claims 1, 21, 23, 26, and 27 all recite elements not taught or suggested by Brain, Applicant believes these claims and their dependents are not anticipated by the cited art. Applicant therefore believes the pending application is in condition for allowance, and requests that the claims be allowed to issue.

Applicant requests a three-month extension of time up to and including March 8, 2006. The commissioner is hereby authorized to charge the \$510.00 extension of time fee to Deposit Account No. 08-0219. No other fees are believed due with this submission, however please charge any fees, or credit any overpayment, that may be due in connection with this paper to Deposit Account No. 08-0219.

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Respectfully submitted,

By 

Richard A. Goldenberg

Registration No.: 38,895

WILMER CUTLER PICKERING HALE AND
DORR LLP

60 State Street

Boston, Massachusetts 02109

(617) 526-6548

Attorney for Applicant